



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 493

IN THE MATTER
OF
JOHN F. COX

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and John F. Cox ("Rep. Cox") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On June 22, 1993, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into allegations that Rep. Cox had violated the conflict of interest law, G.L. c. 268A. The Commission has concluded its inquiry and, on January 25, 1994, voted to find reasonable cause to believe that Rep. Cox violated G.L. c. 268A, §'3 and 23(b)(3).

The Commission and Rep. Cox now agree to the following facts and conclusions of law:

1. Rep. Cox has served in the state legislature from January 1983 to the present. During that time, he has served on a number of committees including the Joint Committee on Insurance (1983-1990), Banks and Banking (1982-1990), and the Committee on Bills in the Third Reading (1990-1993, chair).
2. Rep. Cox has sponsored many bills affecting the insurance industry.
3. In addition, Rep. Cox, as a member of various legislative committees, has participated in many hearings on bills of interest to the insurance industry. Such participation has included voting on whether such bills should be reported out of committee. Rep. Cox also voted on such bills on the House floor.
4. During the period relevant here, F. William Sawyer ("Sawyer") was the senior John Hancock Mutual Life Insurance Company, Inc. ("Hancock") lobbyist responsible for Massachusetts legislation. At all relevant times, he was a registered legislative agent (for Hancock) in Massachusetts. Hancock, a Massachusetts corporation, is the nation's sixth largest life insurer doing business in all 50 states. It offers an array of life, health and investment products. As a Massachusetts domiciled life insurer, its activities are more comprehensively regulated by Massachusetts than by any other state.
5. During the period relevant here, George Traylor ("Traylor") was a registered legislative agent in Massachusetts for various clients, including the Medical Malpractice Joint Underwriting Association of Massachusetts. The association provides malpractice and incidental insurance coverage for physicians, dentists, and hospitals.
6. During the period relevant here, William Carroll ("Carroll") was a registered legislative agent for the Life Insurance Association of Massachusetts ("LIAM"). LIAM is a trade association of life insurance companies doing business in Massachusetts.
7. At all relevant times, Rep. Cox knew that Sawyer and Carroll were Massachusetts registered lobbyists for Hancock and LIAM, respectively. Rep. Cox also knew that Traylor was a Massachusetts registered lobbyist

representing a number of different clients. On occasion these individuals lobbied Rep. Cox regarding various pieces of legislation.

8. Lobbyists are employed to promote, oppose or influence legislation.

9. One way in which some lobbyists further their legislative goals is to develop or maintain goodwill and personal relationships with legislators to ensure effective access to them. Some lobbyists entertain legislators through meals, drinks, golf and sporting events in order to develop the desired goodwill and personal relationships.

10. From December 8, 1992 to December 14, 1992, Rep. Cox and his spouse were in Puerto Rico. Rep. Cox had registered to attend a Council of State Government's ("CSG") conference in San Juan. However, he and his spouse stayed at the Las Palmas del Mar Resort on the southern coast of Puerto Rico. The resort is approximately 40 miles from San Juan. Rep. Cox stayed at Las Palmas with several other legislators and a number of Massachusetts lobbyists. Rep. Cox maintains he chose not to stay at the conference hotel in San Juan because of safety concerns. According to Rep. Cox, because of the distance from San Juan, he did not attend any of the CSG conference functions.

On the evening of December 8, 1992, Rep. Cox and his spouse ate at the Las Palmas Terrace, a restaurant at Las Palmas del Mar. Rep. Cox did not pay for this meal. Sawyer's records indicate that Sawyer paid, and that the Coxes' pro rata share of the cost of the meal was \$55.

Rep. Cox and his spouse ate at the Casa Verde restaurant at Las Palmas del Mar on the evening of December 10, 1992. Again, Rep. Cox did not pay for the meal. Sawyer's records indicate that Sawyer paid, and the Coxes' pro rata share of the cost of the meal was \$70.

As to each of the foregoing instances, Rep. Cox testified that, although he knew there were several Massachusetts lobbyists staying at Las Palmas, he did not know who paid for these meals.

On December 13, 1992, Rep. Cox and his spouse, along with Rep. Mara and his spouse, went on a fishing excursion with George Traylor and another Massachusetts lobbyist. The boat was a 40 foot fishing vessel with a captain and one member crew. The cost of chartering the boat was \$383. The boat trip lasted several hours and included deep sea fishing and a stop for snorkeling. A box lunch was provided. Rep. Cox did not know what, if any, arrangements had been made between Traylor and the other lobbyist to pay for this excursion, although he assumed that one or both of them were paying for it. In fact, Traylor paid for the charter. The Coxes' pro rata share of the cost of the charter was \$128.

11. Between March 10, 1993 and March 14, 1993, Rep. Cox and his spouse, along with several other legislators and lobbyists, stayed at the Plantation Resort at Amelia Island, Florida. Most of the legislators and lobbyists had registered to attend an educational conference sponsored by the Conference of Insurance Legislators. According to Rep. Cox, he planned to register for the conference upon his arrival at Amelia Island but, due to inclement weather and other circumstances, Rep. Cox neither registered for nor attended conference events.

On the evening of March 12, 1993, Rep. Cox and his wife ate dinner at the Ritz Carlton along with a group of Massachusetts legislators and lobbyists. Again, Rep. Cox understood that one or more private lobbyists paid for the dinner, although he did not know which lobbyist paid. Carroll, the lobbyist representing LIAM, paid for this dinner.^{1/} The total cost of the dinner was approximately \$3,000. The Coxes' pro rata share of the cost of the meal was approximately \$150.

Finally, Rep. Cox played two rounds of golf while at Amelia Island. One was at an Amelia Island Plantation course, the other at the Valley Course at Sawgrass, a golf course located at Ponte Verde, Florida. Rep. Cox did not pay for his golfing expenses at either course. He understood that one or more Massachusetts lobbyists paid for these expenses. It is unclear which lobbyist paid for these expenses. Greens fees and cart expenses per person were \$80 and \$104^{2/} at Amelia Island and Sawgrass, respectively.

12. Section 3(b) of G.L. c. 268A prohibits a state employee from directly or indirectly receiving anything of substantial value for or because of any official act or act within his official responsibility performed or to be performed by him.

13. Massachusetts legislators are state employees.

14. Anything worth \$50 or more is of substantial value for §3 purposes.^{3/}

15. By accepting a \$128 fishing boat excursion from Traylor, while Rep. Cox was in a position to take official actions which could benefit Traylor, Rep. Cox accepted items of substantial value for or because of official acts or act within his official responsibility performed or to be performed by him. In doing so he violated §3(b).^{4/5/}

16. As the facts above indicate, Rep. Cox received, in addition to the \$128 fishing excursion gratuities, a total of \$459 in gratuities of \$50 or more,^{6/} where he states he did not know the specific identity of the source of the entertainment.

17. Section 23(b)(3) prohibits a public employee from knowingly or with reason to know acting in a manner which would cause a reasonable person knowing all of the circumstances to conclude that anyone can improperly influence or unduly enjoy his favor in the performance of his official duties.^{7/}

18. By accepting a total of \$459 in entertainment of \$50 or more in value where he did not know the specific identity of the donor, but did know that the donors were Massachusetts lobbyists, Rep. Cox acted in a manner which would cause a reasonable person knowing all these facts to conclude that the lobbyists present could improperly influence Rep. Cox in the performance of his official duties.^{8/} In so acting, he violated §23(b)(3). In other words, Rep. Cox knew or had reason to know that his actions would create an appearance of favoritism.

19. The Commission is aware of no evidence that the gratuities referenced above were provided to Rep. Cox with the intent to influence any specific act by him as a legislator or any particular act within his official responsibility. The Commission is also aware of no evidence that Rep. Cox took any official action concerning any proposed legislation which would affect any of the registered Massachusetts lobbyists in return for the gratuities. However, even though the gratuities were only intended to foster official goodwill and access, they were still impermissible.^{9/}

20. Rep. Cox cooperated with the Commission's investigation.

In view of the foregoing violations of G.L. c. 268A by Rep. Cox, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Rep. Cox:

(1) that Rep. Cox pay to the Commission the sum of one thousand, seven hundred and fifty dollars (\$1,750.00) for violating G.L. c. 268A, §3(b) and §23(b)(3);^{10/} and

(2) that Rep. Cox waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement and in any related administrative or judicial proceedings to which the Commission is or may be a party.

Date: May 12, 1994

^{1/} The Commission has evidence Carroll subsequently received contributions of \$500 and \$600 from two of the Massachusetts lobbyists who were at this meal.

^{2/} This \$104 included the following: \$80 greens fees, \$18 for one-half a cart, and \$6 tax.

^{3/} See *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); *EC-COI-93-14*.

^{4/} See &19.

^{5/} For §3 purposes, it is unnecessary to prove that the gratuities given were generated by some specific identifiable act performed or to be performed. As the Commission explained in *Advisory No. 8*, issued May 14, 1985, prohibiting private parties from giving free tickets worth \$50 or more to public employees who regulate them,

Even in the absence of any specifically identifiable matter that was, is or soon will be pending before the official, §3 may apply. Thus, where there is no prior social or business relationship between the giver and the recipient, and the recipient is a public official who is in a position to use [his] authority in a manner which could affect the giver, an inference can be drawn that the giver was seeking the goodwill of the official because of a perception by the giver that the public official's influence could benefit the giver. In such a case, the gratuity is given for his yet unidentifiable "acts to be performed."

Specifically, §3 applies to generalized goodwill-engendering entertainment of legislators by private parties, even where no specific legislation is discussed. *In re Flaherty*, 1991 SEC 498, issued December 10, 1990 (majority leader violates §3 by accepting six Celtics tickets from billboard company's lobbyists). *In re Massachusetts Candy and Tobacco Distributors, Inc.*, 1992 SEC 609 (company representing distributors violates §3 by providing a free day's outing [a barbecue lunch, golf or tennis, a cocktail hour and a clam bake dinner], worth over \$100 per person, to over 50 legislators, their staffers and family members, with the intent of enhancing the distributors' image with the Legislature and where the legislators were in a position to benefit the distributors).

Section 3 applies to meals and golf, including those occasions motivated by business reasons, for example, the so-called "business lunch". *In re U.S. Trust*, 1988 SEC 356. Finally, §3 applies to entertainment gratuities of \$50 or more even in connection with educational conferences. *In re Stone & Webster*, 1991 SEC 522, and *In re State Street Bank*, 1992 SEC 582.

Rep. Cox has argued that §3 does not apply to meals given to legislators. There is nothing in the legislative history regarding §3 or the language of §3 to support that argument. In the Commission's view, §3 applies to any form of entertainment, including meals, given to any public official.

On the present facts, §3 applies to the lobbyists entertaining Rep. Cox where the intent was generally to create goodwill and the opportunity for access, even though specific legislation was not discussed.

^{6/} 12/8/92 (\$55); 12/10/92 (\$70); 3/12/93 (\$150); and 3/10/93 to 3/13/93 (\$184).

^{7/} This conduct also raises issues under §3 discussed above. Nothing in §3 requires that the public official know the source of the gift. All that is required is that the public official know that he is receiving the gift for or because of official acts or acts within his official responsibility. On the foregoing facts, that could be inferred even though Rep. Cox did not know the specific identity of the donor. In any event, because this is a matter of first impression, the Commission has decided to resolve this conduct pursuant to §23.

^{8/} Moreover, no matter how carefully this matter is investigated, the possibility can never be eliminated that Rep. Cox would later be told of the specific sources of the various gratuities described above. This only adds to the appearance concern created by such conduct.

^{9/} As discussed above in footnote 5, §3 of G.L. c. 268A is violated even where there is no evidence of an understanding that the gratuity is being given in exchange for a specific act performed or to be performed. Indeed, any such *quid pro quo* understanding would raise extremely serious concerns under the bribe section of the conflict of interest law, G.L. c. 268A, §2. Section 2 is not applicable in this case, however, as there was no such *quid pro quo* between the lobbyists and Rep. Cox.

^{10/} This amount is approximately three times the value of the \$587 in prohibited gratuities received by Rep. Cox. The fine reflects the disgorgement of the improperly received gratuities plus a civil sanction.